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THE "HOWLING WILDERNESS" COURTS-MARTIAL OF 1902

BY

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ABSTRACT

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One century after the end of the Philippine War, the consensus among scholars is that the military operations of 1899-1902 constitute the most successful counterinsurgency campaign in United States history. The American military strategy effectively combined elements of military intervention, civic action, social reform, and punitive pacification measures to defeat the guerrilla forces. However, the Army's remarkable historical record of the war is distorted by popular myth and superficial ideological interpretations surrounding the last campaign of the war--the island of Samar. Sensational public revelations of alleged atrocities in the conduct of the Samar campaign led to even more sensationalized courts-martial of American officers charged with violations of the laws of war. Reports of United States military atrocities and graphic revelations of the war's brutality during the Samar campaign courts-martial had a significant effect upon American public attitude. Charges of American cruelty influenced legislation concerning the archipelago and ultimately upon the final disposition of the islands. The abrupt end of the Philippine War in the midst of the Samar courts-martial mitigated the ultimate impact of the cases upon public support for the war. But Samar cast a pall upon the United States military's achievement in pacifying the Philippine Islands, and the campaign to make Samar a "howling wilderness" is perceived as typifying the entire war. The "howling wilderness" courts-martial reflect themes of tension in civil-military relations and the vast influence of public opinion on overseas military adventures that are particularly relevant in a current era of uncertain humanitarian peace operations. The dynamics of the "howling wilderness" courts-martial also reflect the vulnerability of public opinion and support inherent in uncertain military operations aimed at nation-building. Legitimacy is related to rational public perception that those who seek to impose the "rule of law" upon others are not themselves lawless. As the United States military seems poised to enter a new century of intervention in pursuit of regional peace and humanitarianism, a review of the "howling wilderness" courts-martial offers lessons learned and may stimulate reflection for the way ahead.

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THE "HOWLING WILDERNESS" COURTS-MARTIAL OF 1902

One century after the end of the Philippine War, the consensus among scholars is that the military operations of 1899-1902 constitute the most successful counterinsurgency campaign in United States history. The American military strategy, combining elements of military intervention, civic action, social reform, and punitive pacification measures, is notable for its diversity and effectiveness. Overcoming a staggering numerical disparity in troop strength by superior military leadership and weaponry, the United States implemented a "carrot and stick" pacification policy that balanced conciliation with repression. The United States counterinsurgency policy fully engaged all elements of national power---political, economic, cultural and military---to defeat the guerrilla forces. Ultimate success of the United States policy may be attributable as much to mistakes by the Filipino revolutionary leadership as to American military effectiveness.¹ However, the Army's remarkable historical record of the war is distorted by popular myth and superficial ideological interpretations surrounding the last campaign of the war---the island of Samar. Sensational public revelations of alleged atrocities in the conduct of the Samar campaign led to even more sensationalized courts-martial of American officers charged with violations of the laws of war. Reports of United States military atrocities and graphic revelations of the war's brutality during the Samar campaign courts-martial had a significant effect upon American public attitude. Charges of American cruelty influenced legislation concerning the archipelago and ultimately upon the final disposition of the islands. The abrupt end of the Philippine War in the midst of the Samar courts-martial mitigated the ultimate impact of the cases upon public support for the war. But Samar cast a pall upon the United States military's achievement in pacifying the Philippine Islands, and the campaign to make Samar a "howling wilderness" is perceived as typifying the entire war.²

GENESIS OF THE SAMAR CAMPAIGN

MASSACRE AT BALANGIGA

Largely a backwater in the previous conduct of the Philippine War, Samar burst upon public consciousness in late 1901 with the "Balangiga Massacre." The largest island in the Visayan group, with numerous small coastal towns and nearly impenetrable interior jungle, Samar was ideally suited for a prolonged guerrilla warfare.³ Samar's revolutionary commander, General Vincente Lukban, had successfully resisted previous campaigns to pacify the island,

and was exporting his guerrilla activity to nearby Leyte, threatening to undermine American pacification efforts in the region.⁴ In May 1901 the overall United States military commander and governor of the Philippines, General Arthur MacArthur, issued instructions to take "drastic measures" against Lukban and to "make this an emergency measure and clean up [Samar] as soon as possible.⁵ In August 1901 a battalion of the 9th United States Infantry, recently returned from fighting the Boxer rebellion in China, was deployed to extend the line of coastal garrisons on the southern rim of Samar.

The seventy-four-man garrison of Company C, 9th United States Infantry, was established at Balangiga, a coastal town of about 200 native *nipa* huts, and a few substantial stone buildings. Captain Thomas W. Connell, C Company commander implemented a pacification and assimilation plan for the town that was both harsh and naive.⁶ On 28 September 1901 Company C was virtually annihilated by a surprise attack executed by local villagers and Samar guerrillas. Ambushed at Sunday breakfast, the unarmed soldiers were overwhelmed by over one hundred Filipinos brandishing *bolos*, attacking at the signal of the town's church bell.⁷ Led by the Balangiga mayor, the town chief of police, and guerrilla leader Lieutenant Colonel Eugenio Daza, the assailants easily dispatched the three American sentries on duty. Captain Connell and his two fellow officers were early casualties. Many of the soldiers were slaughtered at the mess table, with barely an opportunity to arise from the congested area. Veteran noncommissioned officers assumed command and led a desperate defense using baseball bats, kitchen tool, rocks, and even cans of food. Escaping Balangiga in native dugouts, the Company C survivors embarked upon a harrowing journey to the closest American garrison at Basey. Dogged by guerrilla snipers, rough water, sharks, exposure and thirst, seven more soldiers died or disappeared and were presumed dead during the voyage. No officers and only twenty-six enlisted soldiers in Company C survived the attack and the escape from Balangiga.⁸ The rebels captured over 52 sophisticated Krag-Jorgensen rifles, 26,000 rounds of ammunition, medical supplies, food and equipment. The relief detachment dispatched from the Basey garrison returned to Balangiga the next day. The soldiers buried the American dead and burned the town.⁹ Blurred in the ensuing myth and reality of Balangiga were lurid and widely circulated accounts of mutilation of the soldiers' corpses by the natives.¹⁰ Myth or reality, the deception and savagery of the ambush, and the widespread belief of the mutilation stories, ensured that subsequent pacification operations on Samar were marked by suspicion and pursued with a spirit for revenge.¹¹

News of the massacre at Balangiga profoundly shocked the American public. Editors of the nation's leading dailies compared it to the Alamo and declared it was the worst disaster for the United States Army since Custer's fate at Little Big Horn¹². The newsprint media, nearing the zenith of its power and influence, printed sensational accounts of the disaster and thrust the island of Samar into the American consciousness as dramatically as Dewey's victory at Manila had made Americans conscious of the Philippine Islands in 1899.¹³ In the aftermath of the massacre, an outraged American public demanded vengeance.

INFLUENCE OF GENERAL ORDERS NO. 100

The quest for retribution in the wake of Balangiga coincided with the assumption of Theodore Roosevelt as President following the assassination of McKinley. The new national mood also arrived at the culmination of a pivotal shift in the overall military strategy toward the conduct of the war. The American Army had brought to the Philippine War an informal but widely accepted pacification doctrine derived from its experiences in the Civil War and a long tradition of frontier fighting in the Indian campaigns.¹⁴ The pacification doctrine balanced conciliation with repression and had its legal foundation in General Orders (G.O.) No. 100. G.O. No. 100, or "Instructions for the Government of Armies of the United States in the Field," was a written codification of the laws of war drafted by the noted scholar Dr. Francis Lieber and issued by President Lincoln during the Civil War.¹⁵ Widely recognized in Europe as customary international law, G.O. No. 100 both emphasized the humanitarian obligations of an occupying army to respect the liberty and property of civilians as well as the obligation of the occupied populace to exercise reciprocal restraint.¹⁶ Direct participation in a guerrilla campaign or aiding and abetting the resistance movement subject the offender to immediate retribution through property confiscation, imprisonment, and under some circumstances, by summary execution. Under G.O. No. 100, the punitive act of retaliation was indispensable, and was recognized as one of the militarily most important options of armies.¹⁷ Exemplifying the extreme punitive power of retaliatory action under G.O. No. 100 and the customary international law of the era was the principle that reprisals and retaliatory measures could be inflicted upon all prisoners of war and even upon innocent noncombatants. Persons guilty of no offense whatsoever could be punished in retaliation for the guilty acts of others.¹⁸ However, the early phases of the Philippine campaign emphasized only the humanitarian aspects of G.O. No. 100, and the Army imposed strict standards upon the occupation forces, consistent with the McKinley administration's incentive-based doctrine of "benevolent assimilation."¹⁹

By late 1899, Aguinaldo's insurrection army was defeated as a regular fighting force. His *insurrectos* transitioned to guerrilla warfare and turned increasingly to terrorism, effectively defeating American attempts at benevolent pacification. In October 1900 MacArthur's annual report to Washington emphasized the difficulty of fighting enemies who are able to seamlessly transition into the general population.²⁰ Deciding that a new approach to the problem of pacification was needed, MacArthur waited until McKinley's reelection was secured in November 1900 to begin the strict enforcement of the punitive provisions of G.O. No. 100 in order to isolate the guerrillas from their civilian bases of support. In December 1900 MacArthur issued a proclamation to the Filipino people stating that the guerrilla campaign and its supporters were guilty of violating the laws of war, and henceforth, the American occupation forces would hold responsible parties fully accountable for their crimes.²¹ MacArthur's proclamation, translated and issued in Spanish and Tagalog, provided notice that civilians suspected of supporting the Filipino resistance movement would be subject to what the proclamation termed "exemplary punishment."²² MacArthur provided clear command guidance to subordinate department commanders applying the punitive provisions of G.O. No. 100: "the more drastic the application the better, provided, only, that unnecessary hardships and personal indignities shall not be imposed upon persons arrested and that the laws of war are not violated in any respect touching the treatment of prisoners."²³ MacArthur's new strategy signaled that the strategic vision of "benevolent assimilation" would be subordinate to the military objective of pacification obtained by implementing against the guerrillas and their supporters the harsh punitive and retaliatory measures sanctioned by G.O. No. 100.

IMPERIALISM, ANTI-IMPERIALISM, AND THE DOMESTIC CONTEXT

The revised pacification campaign also coincided with an important shift in the domestic context of the war. In 1898 the United States had emerged a world power following an immensely popular victory over Spain. It was a "splendid little war," in a phrase coined by future secretary of state John Hay. The armistice ending hostilities provided that Spain relinquish Cuba and cede Puerto Rico to the United States, and for the United States to occupy Manila until the disposition of the Philippines was determined. By the time the Treaty of Paris was signed in December 1898 formally ending the Spanish-American War, President McKinley had decided that full possession of the Philippines was necessary to secure burgeoning United States military and economic interests in the region.²⁴ The acquisition of overseas possessions spawned the formation of the Anti-Imperialist League, dedicated to opposing ratification of the

Treaty of Paris and American imperialism. Anti-Imperialist League membership counted Grover Cleveland, Andrew Carnegie, and many prominent lawyers, educators, clergymen, editors, and labor leaders.²⁵ The Senate ratification debate on the treaty split the nation in two and focused on the larger issue of whether the United States would abandon its traditional insularity and assume global power and responsibilities. The intense division of opinion pitted the young and naively patriotic expansionists enthusiastically embracing a new “frontier” overseas, against the elite but vintage patrician and established social reformers of the anti-imperialists. The debate largely mirrored respective Republican and Democratic Party philosophies. The treaty was ratified by the Senate in February 1899 by only one vote, and then only because of the defection of the Democratic standard-bearer, William Jennings Bryan.²⁶ The first skirmish between Aguinaldo’s revolutionary army and the Americans occupying Manila pursuant to the treaty had occurred only two days before the vote. It was the beginning of a long and brutal war, one of the kind that Rudyard Kipling termed a “savage war of peace.”²⁷

The continuing controversy over American imperialism, linked with the conduct of operations in the Philippines, would ebb and flow with the course of the war. The debate was partisan, highly public, and inflammatory, with endlessly spiraling sensationalism generated in the “Yellow Press” between competing Hearst and Pulitzer publications. McKinley’s resounding defeat in November 1900 of William Jennings Bryan, the Democratic presidential candidate endorsed by the anti-imperialists, in effect constituted a public referendum on the pursuit of the war. McKinley’s reelection crushed any remaining vestige for American-sponsored independence for the Philippines, and created the permissive domestic environment for MacArthur’s policy shift from civic action and conciliation to aggressive counterinsurgency measures, including the concept of retaliation sanctioned by G.O. No. 100.²⁸

1901: “THE YEAR OF VICTORY”

Historians label 1901 as the “year of victory” in the Philippines.²⁹ MacArthur’s new strategy combined aggressive military action designed to garrison and secure civilian population centers, denying insurrectos their traditional bases of logistics and support, with more effective counterinsurgency operations that left little sanctuary for the guerrillas and systematically destroyed their will to resist. MacArthur’s campaign plan deliberately integrated his military strategy with elements of civil-military operations designed to combat the widespread use of terror, the guerrilla’s most effective weapon to enforce popular support for the resistance. In

addition to providing better municipal security, MacArthur provided Filipinos with a role in their own defense by employing native scouts and municipal police in support of pacification.³⁰ He actively promoted the Philippine Commission's backing of the Filipino Federal party, a pro-American political movement organized to counter Aguinaldo's independence movement, and purged municipalities of suspected insurrecto sympathizers and guerrilla shadow governments. American propaganda efforts became more centralized and effective. Lastly, the punitive use of G.O. No. 100 was employed to significant effect. Prisoners were no longer released, but confined until they provided information or surrendered weapons. Property confiscation and crop destruction increased, with far less technical attention to ensure that the "burnings" were related to insurgent activity.³¹ The techniques of deportations and concentration of civilians into "protected zones," outside of which everyone was to be treated as hostile, were employed for the first time.³² MacArthur also removed restraints he had imposed upon military commissions conducting trials of Filipinos for crimes of murder, rape, torture, robbery, and general terrorism, and the number of death sentences he approved and executed increased by over a factor of ten.³³ As a consequence of MacArthur's emphasis on the more punitive use of G.O. No. 100, the lines between military and civilian targets, and the distinction between guerrillas and noncombatants, became increasingly blurred.

By early 1901, MacArthur's severe pacification measures and the increasing isolation of the *insurrectos* led to the surrender of Aguinaldo's most effective revolutionary leaders, and a widespread swing of popular support away from the guerrillas. Increasingly desperate, the guerrillas resorted to wholesale terror against the population and American collaborators, but unlike the terror campaigns of late 1900, the Army had more effective tools to combat terrorism and the political will to employ them. On 23 March 1901, Aguinaldo was captured in a daring raid and issued an appeal for peace. Accepting American sovereignty of the Philippines, Aguinaldo urged those Filipinos still in arms to end their resistance. In July 1901 General MacArthur surrendered full executive as well as legislative authority to the Second Philippine Commission, operating under the appointment of William Howard Taft as Civil Governor, and responsibilities as commanding general of the Philippines to Major General Adna R. Chaffee. By September 1901, only the province of Batangas under the control of revolutionary General Miguel Malvar, and the island of Samar, under *insurrecto* General Vicente Lukban, maintained forces capable of resisting American control, but as far as the majority of provinces in the Philippines were concerned, "pacification was at hand."³⁴ The erroneous American assessment that the pacification campaign was virtually complete, widely quoted by the administration in the

press, made the “treacherous” disaster at Balangiga all the more shocking and infamous. The ensuing American military reaction on Samar, and the aberrational conduct of only a few officers, nearly succeeded in undoing the previous three years of military-civil pacification, and provided the momentum to revive the vocal opposition of the Anti-Imperialists.

THE SAMAR CAMPAIGN

In late October 1901, the Navy deployed a squadron of gunboats to Samar and a 300-man Marine battalion under the command of Major Littleton W.T. Waller. Philippines military commander Major General Adna R. Chaffee cautioned that while soldiers were not to exercise inhuman treatment on the rebellious Samar and Batangas islands, they were to be “stern and inflexible,” and to punish, “quickly and severely,” any hostile act of the Filipino inhabitants.³⁵ After the Balangiga massacre, the policy of benevolent assimilation was to be replaced with stern military measures characterized by suspicion and distrust of the native population, and the quest for vengeance.³⁶ Chaffee directed that Waller’s command be attached for operational purposes to the newly created United States Army 6th Separate Brigade, commanded by Brigadier General Jacob H. Smith. By November 1901, Smith’s command on Samar would exceed 4,000 soldiers.³⁷ Smith, a hoary veteran of the Civil War and Indian pacification campaigns, would soon prove himself to be the most intemperate and controversial commander of the war.

FATEFUL ORDERS OF GENERAL “HELL ROARING JAKE” SMITH

The selection of Smith for promotion to Brigadier General and assignment as the military commander of Samar and Leyte must register as one of the gravest blunders of the entire war.³⁸ Enlisting in the Union Army in 1861, he quickly acquired a commission as a volunteer officer in the Second Kentucky Regiment.³⁹ Wounded at Shiloh, he was placed into quasi-retirement and served the remainder of the war as a recruiter. In 1867 he obtained a Regular Army captaincy and in 1869 Smith tried to convert a temporary major’s appointment as a judge advocate into a permanent one. In the confirmation process the Judge Advocate General of the Army discovered that Smith had used his position as wartime recruiter to engage in profiteering through recruit bounties and speculation in gold, diamonds, and whiskey.⁴⁰ Smith’s temporary judge advocate appointment was revoked when it was discovered that he had perjured himself in explaining his wartime conduct.⁴¹ Smith spent the next 27 years as a Captain on the frontier,

and his service record reflects three separate general courts-martial for insubordination to his commanding officer, conduct unbecoming an officer arising from barroom gambling debts, and finally, his apparent trademark of making false official statements.⁴² His service record amply reflects his propensity for making imprudent and intemperate remarks, both written and oral, and a recurring pattern of blatant disregard for veracity.⁴³ He was dogged by creditors and civil courts for bad debts throughout his entire career, leading to excessive absences from duty for court appearances and culminating in a years' absence on sick leave for "marked nervous prostration and depression."⁴⁴

The Spanish-American War appeared to temporarily salvage Smith's career.⁴⁵ Physically short in stature, because of his booming voice and his tendency to hurl invective, he had long been nicknamed "Hell Roaring Jake."⁴⁶ Escaping the exile of frontier service, Smith served as a combat commander in the Spanish-American War. In 1898 Smith was wounded again at the battle of Caney in Cuba. But even though wounded in battle and recognized for displaying courage under fire, Smith's wartime service in Cuba did not escape controversy.⁴⁷ Transferred to the Philippines as a regimental and district commander, Smith had demonstrated a propensity for violent extralegal action, and often intemperately admonished officers whom he believed treated Filipinos too leniently.⁴⁸

Directed by Chafee to employ the harshest methods to clean things up in Samar after Balangiga, Smith immediately escalated the level of violence on Samar and nearby Leyte. He suspended civil government, and aggressively used joint naval and ground forces to deny the guerrillas sanctuary along the coast. Convinced that he could end Filipino resistance to American control by making "war hell," he directed a campaign of widespread property and livestock destruction and collective deprivation.⁴⁹ Substituting the preceding strategy of humane and benevolent "attraction" with "fire and sword," he intended the civil population to cease supporting the guerrillas and switch allegiance to the Americans from starvation and fear, if for no other reason.⁵⁰ Unlike the integrated counterinsurgency campaign being waged simultaneously in the rebellious province of Batangas by the 3rd Separate Brigade under the command of General J. Franklin Bell, Smith's "grand strategy" on Samar was poorly planned and faulty in its execution.⁵¹ In issuing written instructions to subordinate commanders on Samar, Smith gave carte blanche in the application of G.O. No. 100.⁵² In supplementing his written instructions with verbal guidance, Smith outdid his propensity for intemperate speech

and behavior. Early in the campaign, Smith directed several of his garrison commanders and in particular, Marine Major Waller, "I want no prisoners....I wish you to kill and burn. The more you kill and burn, the more you will please me. I want all persons killed who are capable of bearing arms in actual hostilities against the United States....the interior of Samar must be made a howling wilderness."⁵³ When Waller sought clarification of the age limit to respect, Smith designated every Filipino boy ten years and older as capable of bearing arms and, accordingly, combatants.⁵⁴

MAJ L.T. WALLER, HERO OR BUTCHER OF SAMAR?

Historical writers are passionately divided in their assessment of Waller's command on Samar.⁵⁵ Certainly the Marines sent in to reinforce the 9th Infantry on Samar were driven by a spirit for vengeance and an abundance of suspicion and animosity in the wake of Balangiga.⁵⁶ It is clear that Waller, a combat-experienced and dapper career officer guided by unwavering ambition to become a future commandant of the Marine Corps, did not literally comply with Smith's instruction for genocide.⁵⁷ It is less clear whether Waller's own professional judgment was tainted by Smith's outrageous instructions. Waller reported that in an eleven-day period his men had killed 39 *insurrectos* and 13 carabao, burned 255 dwellings, and destroyed tons of rice.⁵⁸ Waller's Marines, aided by Navy gunboats, made daring raids upon guerrilla camps in search of General Lukban, Samar's insurrectionist leader. Intent upon taking the offensive to the elusive guerrillas, Waller led his men on patrols deeper and deeper into Samar's formidably dense and mountainous interior. In one of the great American epics of the war, Waller's poorly planned and executed march across the southern end of Samar lost eleven Marines to starvation, exhaustion and exposure.⁵⁹ Rescued by Army patrols, the Marine survivors emerged from the jungle starving, barefoot, covered with leeches and water sores, and clothed in rags. Filipino porters, using native ingenuity to forage for roots and fruit, probably saved the remainder of the Marines from perishing. The porters, except for three who deserted on the fateful journey, ultimately carried even the soldiers' weapons and ammunition because the Marines emerged from the march literally helpless and half-crazed with fever. Ironically, the press and military mythology lionized the affair into an epic tale of courage and glory, so the ensuing historical record of the patrol is not one of botched leadership but of epic perseverance and survival under unimaginable hardship.⁶⁰ For decades afterwards, Marines of any rank

would stand at attention when a veteran of the campaign entered the mess hall and be saluted with the toast "Stand, Gentlemen, he served on Samar."⁶¹

Waller and the Marine survivors were convinced that their misfortune had been aggravated by the treachery of native porters accompanying the patrol. The Marine's suspected the porters of conspiracy to mutiny, believing the porters could have foraged more aggressively for food. Evidence of the porter's mutiny is contradicted by their performance during the patrol, and by the very fact of the porters' voluntary return to base bearing the hapless Marine's rifles and ammunition.⁶² Rendered delirious by the ordeal, but impudently refusing to relinquish command, Waller compounded the tragedy by ordering the execution of the ten native porters, and one other Filipino suspect accused of a plot to massacre the Marines at their base camp.⁶³ Evidence of the lone Filipino's conspiracy had been obtained through the use of the "water cure," a brutally effective but illegal interrogation method employed by Major Edwin F. Glenn, the brigade provost marshal and judge advocate responsible for counterintelligence.⁶⁴ Waller's adjutant, Lieutenant John H.A. Day, supervised the firing squad and on his own authority later executed a Filipino prisoner from whom he claimed to have secured a confession of treachery. All of the prisoners were summarily executed without benefit of a military trial or serious inquiry.

ROOSEVELT AND ROOT UNDER FIRE

The increasing savagery and brutality of the campaigns being waged by Generals Bell in Batangas and Smith in Samar did not go unnoticed by the press, already whipped into a frenzy by the sensational news coverage of Balangiga. Published private letters and diaries of repatriated Philippine veterans detailing indiscriminate use of the water cure and mass executions, most discovered upon inquiry to be grossly exaggerated or patently false, nonetheless fueled the hype of the anti-imperialist press and supported the contention that the Army was waging unorthodox warfare in the Philippines.⁶⁵ To blunt a Democratic call for the Senate to independently investigate the conduct of the war, Roosevelt's administration insisted that the inquiry be conducted by the standing Senate Committee on the Philippines, which commenced lengthy hearings on 31 January 1902.⁶⁶ Extensively covered by all the major dailies, the hearings proved embarrassing to the Army and the administration. Responding to the committee's request for information regarding the public charges of Army cruelty to native Filipinos, Secretary of War Root hurriedly published on 17 February 1902 a compilation of official inquiries rebutting the allegations of cruelty and containing the results of trial of 44

officers, soldiers, and American camp followers who were tried for violations of the humanitarian prescriptions of G.O. No. 100.⁶⁷ Root's damage control measure backfired, and the price of failure was a loss of administration and Army credibility. Five of the courts-martial, each against officer accused, resulted in acquittals. Most of the 39 Americans convicted for crimes of torturing and shooting prisoners, and particularly the officers, received sentences of mere fines or reprimands.⁶⁸ Root's report also contained an exhaustive 371-page compilation of Filipinos tried by military commission for cruelty against Filipinos in a futile attempt to place the Army's misdeeds in context.⁶⁹

The highly publicized controversy reflected continued public political polarization over the Philippines, and threatened to damage Roosevelt's election chances when he would run on his own less than two years away. Under the mounting pressure of adverse publicity and Roosevelt's determination to mitigate the public damage, Root increasingly intervened in the operational affairs of the Philippines.⁷⁰ Propitiously, Root then received word from Chaffee that Marine Major Waller had executed 11 prisoners on Samar. On 4 March 1902 Major Waller and Lieutenant Day were arrested, and formally served with the charge of murder in violation of the 58th Article of War.⁷¹ In response to testimony before the Senate committee regarding Major Glenn's generous use of the water cure, Root directed Chaffee to relieve Glenn and transfer him to San Francisco with a view toward court-martial.⁷²

THE "HOWLING WILDERNESS" COURTS-MARTIAL

MAJOR WALLER'S CASE IGNITES A FIRESTORM

The subsequent courts-martial of Waller and Day for murder were public spectacles extensively covered by the press. The controversial proceedings focused public debate on a brutal and ambiguous Philippine War inconsistent with the nation's naive perception of imperial splendor. Though not a lawyer, Waller led his own defense⁷³. His senior assigned defense counsel was Major Glenn, a judge advocate graduate of West Point and University of Minnesota School of Law, who was detached for court-martial duty while under investigation for his own violations of the laws of war. Glenn convinced Waller to initially challenge the Army court's jurisdiction to try a Marine officer, but the objection was overruled.⁷⁴ Waller's defense on the merits was based upon his contention that G.O. No. 100 authorized the summary execution of the porters as irregular "criminals" not entitled to status as prisoners of war. Irrespective of their

status, Waller argued that G.O. No. 100 authorized their execution as a measure of retaliation, universally acknowledged as the sternest feature of war.⁷⁵ Ironically, Waller initially resisted a defense based upon compliance with General Smith's instructions to make Samar a "howling wilderness" and engage in genocide.⁷⁶ But Waller was forced to reveal the orders when Smith, called to testify as a prosecution rebuttal witness, perjured himself by denying that he had given Waller any special instructions on the conduct of the campaign, or had directed that no prisoners be taken.⁷⁷ Waller also produced three other officers who collaborated the Smith-Waller exchange.⁷⁸ Deliberating on 12 April 1902 for less than half an hour, the panel voted eleven to two acquitting Waller of the charge.⁷⁹ Lieutenant Day, employing a defense based upon his compliance with Major Waller's order to execute the prisoners, was acquitted of his murder charge in a subsequent court-martial before the same panel.⁸⁰

The revelation of General Smith's verbal instructions to his subordinate officers, and disclosures of alleged American atrocities attributed to those directives, shocked Americans at home and rekindled the national debate over the conduct of the war and its manifestation of imperialism.⁸¹ Anti-imperialists, recovering from their crushing defeat at the polls the previous year, began a new campaign to publicize American military atrocities and to pressure the administration to end the war.⁸² Waller's acquittal shifted responsibility from the Marine Corps to the Army, and the glare of the publicity compelled the Roosevelt administration to bring charges against General Smith.⁸³ In order to ensure that Roosevelt had more influence in the case, the court was convened under the direct authority of the President himself, bypassing Chaffee as convening authority.⁸⁴ Smith was tried before a court-martial convened in Manila in May, 1902. Smith was not charged with murder, nor even with perjury for his testimony in the Waller case, but with "conduct to the prejudice of good order and military discipline" in issuing the burn and kill orders to Waller. Smith pled not guilty to the charge but submitted a statement of fact fully admitting the orders that he had issued Waller.⁸⁵ Smith's defense of justification was based upon military necessity within the permissible limits of G.O. No. 100, and he compared his campaign on Samar with Sherman's march to Atlanta.⁸⁶ Colonel C.A. Woodruff, Smith's defense counsel, wisely kept his irascible client away from the stand. A parade of subordinate officers, including Major Waller, testified that Smith's orders were not taken literally and that traditional noncombatants were not subject to slaughter.⁸⁷ In his impassioned closing argument, Woodruff declared that Smith was being tried because of "an overwhelming or noisy public sentiment in the United States, based upon rumors for some unknown, and I believe, ignoble

purposes, until hysteria has been produced, and this gray haired, wounded, victorious general is exposed to the indignity of a court-martial in deference to that public opinion."⁸⁸ The press reported that Woodruff's closing argument was "a remarkable oratorical effort, that drew tears from hearers."⁸⁹ Smith was found guilty of the offense, but the panel of officers sentenced Smith only to an admonishment by the reviewing authority, stating "the court is thus lenient in view of the undisputed evidence that the accused did not mean everything that his unexplained language implied; that his subordinates did not gather such a meaning, and that the orders were never executed in such sense, notwithstanding the fact that a desperate struggle was being conducted with a cruel and savage foe."⁹⁰ Ever garrulous to the end, Smith declared to reporters at the conclusion of his trial that he meant every word and that burning and shooting the "treacherous savages" was the only way to win to the war.⁹¹ Approving the court's sentence, President Roosevelt issued a lengthy action using the opportunity to involuntarily retire Smith in disgrace and specifically condemn Waller's execution of the porters as an "act which sullied the American name."⁹² Smith was enroute from the Philippines when Roosevelt issued the decision, and was "overcome with emotion" when he received the official notification of his involuntary retirement upon arriving in San Francisco on 1 August 1902.⁹³ "Howling Jake" Smith vanished from public view after 1902.⁹⁴

Major Glenn was tried by court-martial in June, 1902, and convicted of administering the "water cure" upon a Filipino prisoner. He was sentenced to suspension of command for one month and a \$50.00 fine.⁹⁵ In December 1902, Glenn was again tried by court-martial, this time for ordering the execution of seven prisoners of war. Like Waller, Glenn presented a defense that was based upon the unique character of the warfare waged in the Philippines and designed to appeal to the panel of officers who were all veterans of the counterinsurgency campaign. Glenn also argued that General Order No. 100 sanctioned the summary punishment of guides engaging in treachery.⁹⁶ He was acquitted of the charge, but censured by the approving authority who found in Glenn's actions a "reckless disregard for human life," which significantly contributed to the growing impasse between the Army and the civil government.⁹⁷ Glenn, reflecting a bitter sentiment common among Army veterans in the Philippines, wrote a fellow officer: "I have but one regret through it all which is that our responsible commanders who were in a position to do so did not protect us in doing that which they sent us to do and which in fact they showed great anxiety that we should do in order that credit might come to them."⁹⁸

Forwarding the record to Washington, Major General G.W. Davis, Chaffee's replacement as

division commander for the Philippines, expressed hope that the Glenn acquittal marked the last of the barbarity trials in the Philippines, and expressed dismay over the alienation of the officer corps as a result of the cases “I also enclose a Manila newspaper, of February 18th, so you can see an expression of the real sentiment on this subject of the clientele of this newspaper, in fact the sentiment of a vast majority of Americans living here. Were an election for Governor to come off I fancy that Glenn could have three votes to Taft’s one from the American Colony, a sentiment that is also entertained by a very large part of Army officers as well.”⁹⁹

MITIGATION OF THE WAR’S ABRUPT END

The national outrage and sensationalism provoked by the 1902 courts-martial fueled the anti-imperialist fire and might have been more pivotal in influencing the war but for timing. The public impact of the trials and revelations of the war’s depredations prompted a spate of Congressional and partisan hearings, but the efforts were always vulnerable to accusations that it was unpatriotic to “attack the Army while it was fighting in the field.”¹⁰⁰ By 1902 the nation was tired of the lingering guerrilla war that had dragged on for three years even as the administration and military continually offered assurances that victory was at hand. The “howling wilderness” controversy brought temporary renewed momentum to the Anti-Imperialist League. But the League’s persistent and single-minded focus on atrocities just when the American public was in a mood to turn away from the Philippine scandals led to its fractionalization and marginalized the League’s moral authority. Ultimately, the publicity of the “howling wilderness” courts-martial and the atrocity campaign conducted by the Anti-Imperialist League did have a measurable affect upon public opinion and legislation for the future of the Philippines. The Times of London, reporting on a major Philippines policy address issued by Roosevelt on 30 May 1902, linked the President’s chagrin over the courts-martial and cruelty revelations to the first public suggestion that Philippine independence was ultimately possible.¹⁰¹ Legislative hearings culminating in the Philippine Organic Act of 1902 occurred during the height of the “howling wilderness” controversy, and as a result, significant changes in the bill gave Philippine policy a permanent turn toward eventual independence.¹⁰²

Militarily, by late April 1902 the brutal counterinsurgency campaigns on Samar and Batangas had succeeded in completely isolating the guerrillas from their traditional sources of food. With the island interiors a wasteland, American control over the rivers and coasts, and firm naval blockade in force, the dispersed and desperate guerrillas spent more time foraging for

food than fighting.¹⁰³ *Insurrecto* popular support had evaporated from the native population, now largely segregated in protected zones and less vulnerable to guerrilla terrorism. Lukban's capture in February 1902 was followed by the final surrender of guerrilla resistance on Samar in late April 1902. On July 4, 1902, President Roosevelt, uncharacteristically subdued, declared the Philippine war over and issued an amnesty proclamation. In a message simultaneously commanding the Army for its sacrifices and lauding its professional achievements, Roosevelt stated that "with surprisingly few individual exceptions [the war] has been characterized by humanity and kindness to the prisoner and non-combatant" alike.¹⁰⁴ While the "howling wilderness" courts-martial and their progeny would continue through the spring of 1903, the public was only too anxious to move on from the disquieting subject of American war atrocities.

CONSEQUENCES OF THE "HOWLING WILDERNESS" COURTS-MARTIAL

Despite the remarkable success of the American strategy employing all of the elements of national power, the most successful counterinsurgency campaign in United States history remains dogged by historical distortions engendered by the Samar campaign and resulting courts-martial. The public perception of the Philippine War is replete with clichés about the howling wilderness, the water cure, G.O. No. 100, and "civilize 'em with a Krag."¹⁰⁵ The "howling wilderness" courts-martial of 1902 not only cast a pall upon the American military's achievement in the Philippines, it is one of history's ironies that the professionalism and extraordinary talents of all other commanders and garrison officers are forgotten and the exploits of Major Littleton W.T. Waller, Brigadier General Jacob H. Smith, and Major Edwin F. Glenn have come to personify the American officer in the Philippines. The zeal of the Anti-Imperialist League and Yellow Press sensationalizing actual and fictitious atrocities perpetrated by the army in the Philippines obscured the back-breaking labors of this same army which conducted an idealistic and effective civil-military operation that organized and implemented democratic government, dramatically improved health and sanitation, and built an extensive network of educational and public works infrastructure.

One hundred years ago, the "howling wilderness" courts-martial reflect themes of tension in civil-military relations and the vast influence of public opinion on overseas military adventures that are particularly relevant in a current era of uncertain humanitarian peace operations. Roosevelt's heavy hand in staging the courts-martial, when viewed through the lens of the domestic political context, suggests an improper use of the military justice system to deflect

political and public criticism over the conduct and objectives of the lingering war while at the same time minimizing the consequences of judicial action upon the officers concerned. Not only did Roosevelt direct, through Root, the initiation of highly public war crimes-like charges, White House influence manipulated the composition of court panels, overruled valid exculpatory motions, restricted convening authority liberties, and skillfully exploited inter and intra-service rivalries. Final Presidential action on the results of trial against officers accused of committing crimes against Filipinos provided Roosevelt the opportunity to publicly chastise Army behavior even as he reduced the few adjudged sentences of confinement to forfeitures of pay and loss of seniority on promotion lists. The Army is not wholly without blame. Chaffee made the Army vulnerable to charges of preferential treatment when he permitted Smith to be tried for "conduct prejudicial to the good order and discipline" instead of charged of murder and perjury.¹⁰⁶ Despite a pretrial investigation which established that no wholesale slaughter of innocents had occurred on Samar, and that Smith's subordinates had exercised better judgment in executing the campaign than their commander had exercised in directing it, the decision of Chaffee to try Smith for what amounts to making a stupid remark suggests an intent to exercise damage control rather than administer justice. The defense decision on opening remarks to admit that Smith had issued the "howling wilderness" directive and then not have the general testify at trial in his own behalf, while tactically sound provided Smith's propensity for erratic behavior and loose remark, suggests a collusion to minimize collateral damage and may have been influenced by Chaffee's concern that he would be the next victim of the "howling wilderness" courts-martial. Trying Smith for ridiculous ranting and indiscrete language had the effect of portraying Waller as the hapless hatchet man, despite his acquittal, with the effect of permanently staining Waller's career while creating the appearance of a whitewash for the general officer.¹⁰⁷ The reaction of Roosevelt's administration to public outrage engendered by the disclosure of Army atrocities was clumsy and ill considered. Root's rush to publication of the snapshot results of Army courts-martial in the Philippines only fueled the anti-imperialist charge that the Army was the judge of its own crimes, and was shockingly lenient on officer crimes against the "little brown brother." The Roosevelt administration displayed no coherent or comprehensive public relations plan to influence the media and maintain the public perception of legitimacy for the pacification campaign. While the government possessed superior information available from official reports of Philippine civil and military administrations convincingly demonstrating that cruelties to Filipinos were an exception, it released the information only in reaction to anti-imperialist prodding. The failure of the Roosevelt administration to get out front with a more balanced view of the Philippine situation squandered

the prestige of the military and left the legitimacy of the operation vulnerable to a public willing to accept any atrocity story, no matter how far fetched. The stigma of the courts-martial and the Army's perception that Roosevelt and Root were currying public opinion at the expense of the military might have had a more lasting effect but for the war's abrupt end and the administration's muted relief to declare victory.¹⁰⁸ The dynamics of the "howling wilderness" courts-martial also reflect the vulnerability of public opinion and support inherent in uncertain military operations aimed at nation-building. Legitimacy is related to rational public perception that those who seek to impose the "rule of law" upon others are not themselves lawless. As the United States military seems poised to enter a new century of intervention in pursuit of regional peace and humanitarianism, a review of the "howling wilderness" courts-martial, the human frailties, and the national context in which they occurred offers a fascinating glimpse into the fabric of American history nearly one century ago, and may stimulate reflection for the way ahead.

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ENDNOTES

¹ Glenn A. May, A Past Recovered (Manila: New Day Publishers, 1987), 157. May identifies tactical and strategic failures of the insurrection leader, Emilio Aguinaldo y Famy, as the principal cause of Filipino defeat.

² Brian M. Linn, The Philippine War: 1899-1902 (Lawrence, KA: University Press of Kansas, 2000), 321.

³ Samar's inhospitable interior, with no roads or rivers capable of navigation, coupled with the shortage of American troops during the Philippine campaign, led to a highly unfavorable strategic situation by 1901: the American Army garrisoned the few significant coastal towns and made infrequent sorties into the interior while the guerrillas roamed over the island at will. See John M. Gates, Schoolbooks and Krags: The United States Army in the Philippines, 1898-1902 (Westport, CN, Greenwood Press, 1973), 248-253; Joseph L. Schott, The Ordeal of Samar (Indianapolis, Bobbs-Merrill, 1964) 14-15; Linn, The Philippine War, 306-310.

⁴ Ibid. Linn cites Visayan Department commander Brigadier General Robert P. Hughes as stating his garrison occupation forces know nothing about Samar "beyond gun shot range of their stations." Linn, The Philippine War, 306.

⁵ Ibid.

⁶ Accounts of Company C's short garrison performance vary, depending upon the perspective of the writer. At a minimum, all concede that Captain Connell and his soldiers forced the town's population under guard to clean up refuse and enforce sanitation, and that between 80-100 of the strongest male Filipinos, thought to constitute a security risk, were confined at night to two tents designed to hold 16 men each. After the massacre, captured *insurrecto* documents revealed that these males were Lucban's guerrillas infiltrated into the town in advance for the purpose of laying ambush to Company C. Claims of harsh treatment of the civil population must be balanced by company records reflecting that Connell maintained strict military discipline, issuing punishment in instances of theft, brutality, and at least one rape by his soldiers. At the same time, Connell, devoutly religious West Pointer and arrogantly overconfident, earned the enmity of the local populace and his own soldiers by prohibiting cockfighting (one of the town's few social activities) and requiring native women to wear less

revealing clothing. With disastrous results, he failed to maintain adequate force protection and security measures for the garrison. See John M. Gates, Schoolbooks and Krags: The United States Army in the Philippines, 1889-1902 (Westport, CN, Greenwood Press, 1973), 248-253; Joseph L. Schott, The Ordeal of Samar (Indianapolis, Bobbs-Merrill, 1964) 7-53; Linn, The Philippine War, 310-313; Stuart C. Miller, "Benevolent Assimilation": The American Conquest of the Philippines (Westford, MA, Yale University Press, 1982) 198-204; Paul Melshen, "He served on Samar," United States Naval Institute Proceedings 105 (November 1979): 43-45; Stanley Karnow, In Our Image: America's Empire in the Philippines (New York: Random House, 1989); 189-191; James O. Taylor, ed., The Massacre of Balangiga (being an authentic account by several of the few survivors), (Joplin, MO, McCarn Printing, 1931), 2-37; Edward C. Bumpus, In Memoriam (Norwood, MA: n.p., 1902).

⁷ One hundred years after the Balangiga, the myth and controversy surrounding the massacre survives in the present day debate over the church bells of Balangiga. American soldiers serving in the Philippines took three church bells from the island of Samar back to the United States as war booty. Two bells, one made in 1863 and the other in 1896, are stamped with the coat of arms of Franciscan missionaries and currently reside at F.E. Warren Air Force Base near Cheyenne, Wyoming. The United States 11th Infantry Regiment took the two bells from Samar and carried them back to Fort Russell (now F.E. Warren AFB). A third bell taken from Samar resides at the 9th Infantry Regimental Headquarters at Camp Hovey near Tongdachon, South Korea. While all of the bells are popularly attributed to the Balangiga massacre, one persuasive Philippine scholar believes that the one and only church bell used to signal the *insurrecto* attack is the one residing with the 9th Infantry in Korea, offering three elements of proof: *insurrecto* histories of the account relate that the Balangiga bell (singular) was used to signal the attack; some of the American survivors' accounts mention only one bell; and one photograph taken in Manila of most of the Company C survivors of the attack pictured with lone native boy and a church bell is without question that of the bell in Korea. Professor Borrinaga surmises that the 11th Infantry took the two bells at F.E. Warren AFB from other churches in Samar or perhaps Lyete. Prior to the 1998 centennial of the Philippines independence from Spain, concerted and highly publicized diplomatic efforts were made by the President Ramos of the Philippines to obtain the return of the bells from F.E. Warren AFB. While President Clinton supported the request and at least one House Resolution was introduced supporting the Philippine request, Wyoming legislators, the American Legion, and the Veterans of Foreign Wars successfully rebuffed the administration's efforts to return the bells. Less public was the Clinton administration's efforts to force the 9th Infantry to return the bell kept in Korea, but veterans associations also resisted the attempt. With the approaching centennial of the Balangiga massacre (termed the "Balangiga encounter" in the Philippines), renewed efforts seeking the return the bells to the Philippines are likely. See Rolando O. Borrinaga, "Balangiga Bells Update," The Freeman (Cebu, PI), 12 April 1998; David Lamb, "Bells of Balangiga Take Toll on Ties," Los Angeles Times, 8 May 1998, part A, p. 5.; Rep. Robert A. Underwood, "Centennial Anniversary of the Spanish-American War," 5 February 1998, available from <<http://www.house.gov/underwood/speeches/sawar.htm>>. Internet, accessed 10 February 2001; Colonel Edward J. Filiberti, Professor, Army War College, interview by author, 16 January 2001, Carlisle Army barracks, PA.

⁸ Of the twenty-six survivors, only four received no wounds. See the official report of the massacre, General Orders No. 22, HQ, 9th Infantry, 11 October 1901 reprinted in Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess, pt. 2, 1596-1598; Taylor, Massacre of Balangiga, 40-42.

⁹ Report of Captain Edwin V. Bookmiller, Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess, pt. 2, 1594-1596.

¹⁰ Karnow's recital is typical of the reports of widespread mutilation of the slain soldiers: "Their dead comrades had been mutilated beyond belief--as if an arcane rite had driven the townsfolk into a barbaric frenzy. Disemboweled bodies had been stuffed with molasses or jam to attract ants. The sergeant killed while washing his mess kit was still upended in the water barrel, his feet chopped off. A bag of flour had been poured into the slit stomach of an unidentified corpse. Even the company dog had been slain, its eyes gouged out and replaced with stones. Captain Connell's head was found in a fire, far from his torso, his West Point ring missing along with the finger." Karnow, In Our Image, 191. Captain Bookmiller, commander of the relief party who buried the dead, makes no mention of mutilation in his official report. Report of Captain Edwin V. Bookmiller, Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess, pt. 2, 1594-1596. Taylor's collection of Balangiga survivor's accounts has mutilation reports by two soldiers (Corporal Irish and Private Allen) who returned to Balangiga with the Bassey relief expedition, but at least one questionable account should be tempered by the passage of 30 years' time; James O. Taylor, ed., The Massacre of Balangiga (being an authentic account by several of the few survivors), (Joplin, MO, McCarn Printing, 1931), 18 and 32. Testimony by William J. Gibbs, a Company C survivor of Balangiga, related second-hand reports of mutilation by the soldiers of the relief party, but not of the scale attributed to the Balangiga legend. Testimony of William J. Gibbs, Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess, pt. 3, 2296-2297. Daza, the guerrilla leader of the attack, strongly denied that his partisans had mutilated the dead; not only would mutilation violate Samarian cultural taboos, recognition that a relief party would soon return to Balangiga precluded time for such acts. Linn, Philippine War 312, fn. 18. However, during the court-martial of General Jacob H. Smith, Major Combe, surgeon of volunteers, who accompanied the relief expedition to Balangiga, testified that he found a smoldering fire still burning about the head and face of Captain Connell. Combe further testified that a deep wound across the face of Lieutenant Bumpus had been filled with jam, and one of the enlisted men "had his abdomen cut open and codfish and flour had been put into the wound." Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., p. 9.

¹¹ As with many military disasters, the massacre at Balangiga was avoidable. An earlier foray in August 1901 of suspected rebel strongholds on Samar by a First Infantry patrol captured

documents revealing the town's intent to attack the garrison. In a letter to General Lukban, the Balangiga's mayor reported that he had petitioned Major General Chaffee to garrison the town in order to protect it from the rebels. The president's intent was to lull the soldiers into a false sense of complacency and then spring a surprise attack. After Company C arrived, guerrilla irregulars were introduced into the town posing as day laborers for Connell's sanitation campaign. *Bolos* were smuggled into the town church the night before the attack in the false bottom of coffins containing the bodies of small children who had died of cholera. The unusual activity did not arouse the suspicions of the soldiers. The letter also indicated that in addition to the town mayor, the chief of police and the Balangiga's Spanish priest were conspirators with *insurrecto* leader Daza. The captured letter was turned over to Major Edwin F. Glenn, the 9th Infantry Provost Marshal. However, the number of captured documents had become so large that the Americans could not adequately review and assess all of the intelligence data available, and the mayor's letter was not analyzed until sometime in October 1901. The later knowledge that the deception could have been thwarted only infuriated the Americans more and fueled the fire for revenge. See Annual Report of the Secretary of War, 1902, Vol IX, (Washington: Government Printing Office), 633-634; Gates, Schoolbooks and Krags, 248-249; Schott, The Ordeal of Samar, 25-26; Miller, Benevolent Assimilation, 201; Karnow, In Our Image, 189.

¹² Karnow, In Our Image, 191; Miller, Benevolent Assimilation, 204.

¹³ Miller, Benevolent Assimilation, 204.

¹⁴ Linn, Philippine War 9.

¹⁵ General orders No. 100, "Instructions for the government of armies of the United states in the field," issued by the Adjutant General's Office, War Department, Washington, 24 April 1863, are reprinted at Appendix D, Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppression Exercise by our Soldiers toward Natives of the Philippines, SD 205, 57th Cong., 1st sess., pt. 1, 23-34. Dr. Lieber was uniquely qualified to codify what was then the customary laws of war. He served as a soldier against Napoleon at Waterloo and in the Greek War of Independence. Immigrating to the United States in the wake of political persecution in his native Prussia, by 1857 he was appointed a professor of history and law at Columbia College (now Columbia University). Two of Lieber's sons served and fought for the Union during the Civil War, a third son died while fighting for the Confederates. Wrestling with the legal issues of conducting a civil war using only existing municipal laws as guides for soldiers, Lieber's code provided the solution to the Union's dilemma of how to regulate armed combat between the parties without recognizing the legitimacy of the Confederacy. G.O. No. 100 specifically recognized that the laws of war could be applied to rebels in civil wars as well as to belligerents in international war, without conferring recognition of the rebel government. See Donald A. Wells, The Laws of Land Warfare (Westport CN:

Greenwood Press, 1992), 1-5; Burrus M. Carnahan, "Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity," American Journal of International Law 92 (April 1998): 213-216; Thomas G. Robisch, "General William T. Sherman: Would the Georgia Campaigns of the First Commander of the Modern Era Comply with Current Law of War Standards?", Emory International Law Review 9 (Fall 1995): 459-461.

¹⁶ The manual achieved instant fame abroad, and was adopted virtually intact by the armies of Germany, Great Britain, and France. Lieber's code inspired the Brussels Congress of 1874, convened by the emperor of Russia for the purpose of codifying the laws and customs of war. Much of the Lieber document was formally adopted in the Convention with Respect to Laws and Customs of War on Land issued after the two Congresses at The Hague in 1899 and 1907. Both during the Spanish-American War and the Philippine insurrection, G.O. No. 100 was issued without change from the original 1863 version and was applied by the United States as the official army manual on the laws and rules of war. *Ibid.*

¹⁷ G.O. No. 100 permitted reprisals as a strategy in the name of military necessity:

Article 27: The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage.

Article 28: Retaliation will, therefore, never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and moreover, cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution. Unjust or inconsiderate retaliation removes the belligerents farther and farther from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages.

Appendix D, Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppression Exercise by our Soldiers toward Natives of the Philippines, SD 205, 57th Cong., 1st sess., pt. 1, 25.

¹⁸ Article 59 of G.O. No. 100 stated "all prisoners of war are liable to the infliction of retaliatory measures." G.O. No. 100 did not specifically state that noncombatants may be the subject of reprisals, but the principle was customary international law. In 1914 the United States Army revision of G.O. No. 100, *Rules of Land Warfare*, stated at Article 383, "Subjects of Retaliation: All prisoners of war are liable to the infliction of retaliatory measures. Persons guilty of no offense whatever may be punished as retaliation for the guilty acts of others." Donald A. Wells, The Laws of Land Warfare (Westport CN: Greenwood Press, 1992), 40-43; 141.

¹⁹ Between July 1898 and July 1900 no less than 18 general orders, field orders, or circulars were issued to American troops in the Philippines requiring compliance and enforcement with humanitarian aspects of G.O. No. 100. Appendix E, Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppression Exercise by our Soldiers toward Natives of the Philippines, SD 205, 57th Cong., 1st sess., pt. 1.

²⁰ Annual Reports of the War Department for the Fiscal Year Ended June 30, 1901, HD 2, 57th Cong., 1st sess., V, 93.

²¹ Gates, Schoolbooks and Krags, 206-208; Linn, Philippine War, 212-214.

²² Ibid.

²³ Annual Reports of the War Department for the Fiscal Year Ended June 30, 1901, HD 2, 57th Cong., 1st sess., V, 93; see also. Gates, Schoolbooks and Krags, 206-208; Linn, Philippine War 9212-214.

²⁴ Gates, Schoolbooks and Krags, 23-39; Linn, Philippine War, 10-25; Miller, Benevolent Assimilation, 12-23; Karnow, In Our Image, 78-118.

²⁵ Richard E. Welch Jr., Imperialists vs. Anti-Imperialists: the Debate Over Expansionism in the 1890's, (Itasca, IL: Peacock Publishers), 9-11; Zwick, Jim. "The Anti-Imperialist League: A Brief Organizational History." <http://www.boondocksnet.com/ail/ailhist.html>. In Jim Zwick, ed., Anti-Imperialism in the United States, 1898-1935. <http://www.boondocksnet.com/ail98-35.html> (Jan. 14, 2001); Karnow, In Our Image, 136-138.

²⁶ Ibid.

²⁷ Contemporaneous with the Philippine War, England was battling Dutch (Boer) secessionists in the Transvaal. Both wars ended within months of the other. In the poem "White Man's Burden," published in *McClure's Magazine* in February 1899, Kipling encouraged the United States to "have done with its childish ways" and assume the responsibility of a world power. At the same time Kipling foretold of the sacrifice ahead, warning of "the savage wars of peace." Both proponents and opponents of Philippine annexation adopted the phrase freely.

Linn, Philippine War, 322.; Welch, Imperialists vs. Anti-Imperialists, 110-112. In response, the "Brown Man's Burden," fellow Englishman Henry Labouchere's brilliant parody, asked the American people if they were prepared to reject their heritage and "reserve for home consumption the 'sacred rights of man.'" Welch, Imperialists vs. Anti-Imperialists, 112-114.

²⁸ Gates, Schoolbooks and Krags, 206-208; Linn, Philippine War, 212-214.

²⁹ Gates, Schoolbooks and Krags, 225; Linn, Philippine War, 214.

³⁰ Brian A. Linn, The United States Army and Counterinsurgency in the Philippine War, 1899-1902, (Chapel Hill, University of North Carolina Press, 1989), 169.

³¹ Linn, Philippine War, 214.

³² Linn, Philippine War, 214-215.

³³ Up until 1 September 1900 only 72 trials of Filipinos by military commission had been conducted, some with joint defendants, and MacArthur had approved and executed death sentences in only seven of those cases. In the subsequent year, MacArthur approved 79 death sentences and commuted 89 others to life imprisonment or lesser sentences. David L. Fritz, The Philippine Question: American Civil/Military Policy in the Philippines, 1898-1905, Ph.D. dissertation (University of Texas at Austin: Xerox University Microfilms, 1977), 466-467. In general, American justice in the Philippines was stern. Senate Document 205, Part 2, provides general orders promulgating military commission results of trial in over 300 cases involving more than 750 native defendants, covering the years 1900-1901. Only 52 defendants were acquitted of charges, and another 32 were released because of harmful error at trial. Approximately 240 of the defendants were hanged in execution of their death sentence. The vast majority of the 128 life sentences were commutations of the death penalty. The remaining sentences to imprisonment were equally severe: 30 years to 20 defendants, 25 years to 9 defendants, 20 years to 99 men, 15 years to 98 defendants, 20 years to 41 men, and less than 10 years in only 23 cases. Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppression Exercise by our Soldiers toward Natives of the Philippines, SD 205, 57th Cong., 1st sess., pt. 2.; Fritz, The Philippine Question, 467-468.

³⁴ Gates, Schoolbooks and Krags, 241, 243; Linn, Philippine War, 215.

³⁵ Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess., pt. 2, 1592.

³⁶ In the wake of Balangiga, Chaffee's expressed sentiments towards the Filipino are probably reflective of the Army's disdain for the policy of benevolent assimilation and the "lenient" policies of Governor Taft's civil commission: "I have all the time thought that we do not appreciate the fact that we are dealing with a class of people whose character is deceitful, who are absolutely hostile to the white race and who regard life as of little value, and, finally, who will not submit to our control until absolutely defeated and whipped into such a condition. It is to our interest to disarm these people and to keep them disarmed, and any means to that end is advisable. It will probably cost us a hundred lives to get back the guns lost at Balangiga." *Ibid.*

³⁷ Linn, Philippine War, 312.

³⁸ *Id.* Even Fritz, an unabashed admirer of Chaffee's stewardship, calls the selection of "Howling Jake" Smith to command the campaign on Samar as "the one significant lapse in Chaffee's military leadership in the Philippines." Fritz, The Philippine Question, 392.

³⁹ David L. Fritz, "Before the "Howling Wilderness": the Military Career of Jacob Hurd Smith, 1862-1902," Military Affairs 43 (December 1979): 187.

⁴⁰ *Ibid.*

⁴¹ Judge Advocate General Holt noted Smith's nonchalance in using judicial proceedings to mislead and deceive, concluding, "By his conflicting statements and his unfortunate explanation, he is placed in a dilemma full of embarrassment." *Ibid.* 188.

⁴² At his 1866 general court martial concerning the false statements, Smith was sentenced to be cashiered from the Army. President Grover Cleveland's action on the sentence returned Smith to duty with a reprimand. *Ibid.* 189.

⁴³ An 1867 efficiency reports characterized his principal weakness when it described him as “garrulous.” *Ibid.* 188; *Fritz, The Philippine Question*, 377.

⁴⁴ *Ibid.*

⁴⁵ Between his last court-martial and the Spanish-American War, Smith’s records reflect only one other modest impropriety, a charge in 1891 that he used enlisted soldiers as house servants. *Ibid.*

⁴⁶ *Ibid.* 187. Smith was popular with his troops who called him “Our Jakey.” Linn, *Philippine War*, 396, fn. 22. After learning of his infamous orders to make Samar a “howling wilderness,” the press re-christened Smith as “Howling Jake.”

⁴⁷ Smith’s file indicates another officer accused him of grandstanding during the battle of Santiago when he ordered his unit to perform the manual-of-arms in order to keep them calm under fire. *Fritz, “Before the Howling Wilderness,”* 189, 190 fn. 7.

⁴⁸ Linn, *Philippine War*, 312-313.

⁴⁹ Gates, *Schoolbooks and Krags*, 254.

⁵⁰ In written instructions issued to the field on 24 December 1901, Smith stated that his intent was to “wage war in the sharpest and most decisive manner possible,” with the intent that “the policy will create in all the minds of all the people a burning desire for the war to cease; a desire or longing so intense, so personal, especially to every individual of the [wealthy] class mentioned, that it will impel them to devote themselves in real earnest to bringing about a state of real peace, that will impel them to join hands with the Americans in the accomplishment of this end.” *Annual Reports of the War Department for the Fiscal Year Ended June 30, 1902*, IX (Washington: Government Printing Office): 208.

⁵¹ Gates, *Schoolbooks and Krags*, 254-257; Fritz, *The Philippine Question*, 361-373. Linn, *The United States Army and Counterinsurgency in the Philippine War, 1899-1902*, 27. For a comparison of Bell’s and Smith’s strategies and results, see Edward J. Filiberti, “The Roots of United States Counterinsurgency Doctrine,” *Military Review* (January 1988).

⁵² Smith directed that his subordinate officers employ decisive force to terminate the war as soon as practicable, quoting the maxim from G.O. No. 100 that "short severe wars are the most humane in the end." However, Smith left little doubt on which side of the spectrum his Samar campaign would be run: "No civilized war, however civilized, can be carried on a humanitarian basis. In waging this war officers will be guided by General Orders No. 100...Commanding Officers are earnestly requested and expected to exercise, without reference to these headquarters, their own discretion in the adoption of any and all measures of warfare coming within the provisions of this general order which will tend to accomplish the desired results in the most direct way or in the shortest possible space of time." Annual Reports of the War Department for the Fiscal Year Ended June 30, 1902, IX (Washington: Government Printing Office): 208-209; Gates, Schoolbooks and Krags, 254.

⁵³ Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., pp. 2-3, 6-7, 9-17; Linn, Philippine War, 315, 398 fn. 37; Schott, The Ordeal of Samar, 71-72; Fritz, "Before the Howling Wilderness," 186; Karnow, In Our Image, 78-118; Fritz, The Philippine Question, 368-370; Miller, Benevolent Assimilation, 220.

⁵⁴ Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., pp. 2-3, 6-7, 9-17; Schott, The Ordeal of Samar, 71-72.

⁵⁵ The camps of serious historical writers on the subject of Major Littleton Tazewell Littleton Waller can be divided between those on one hand who believe Waller was a honorable warrior who became a victim and scapegoat for the Army's excesses on Samar, and those on the other hand who believe Waller's conduct on Samar was just as disgraceful as his commander, General Smith. Undisputed king of the pro-Waller camp is Joseph L. Schott and his Ordeal of Samar. Schott's work, largely focusing on the Waller court-martial but with a stirring side trip to the massacre at Balangiga, does not use any footnote system but he occasionally specifies sources in the text. While it is clear that he relies extensively upon the Waller record of trial, his intent seems more a good read than a serious documented work. Schott's premise that Waller did not take seriously Smith's orders to "kill everyone over ten" appears supported by the testimony of Waller and others involved. However, several aspects of Schott's version of the massacre at Balangiga are not supported by official reports made at the time, and remain suspect. Karnow calls Waller a "scrupulous professional," a "scapegoat," and notes that Waller's conduct had been "no worse than many other American officers." Karnow, In Our Image, 193. Stuart Miller praises Waller as "one of the country's finest military officers," and "too honorable and too loyal," but the basis of his research is entirely based upon Schott's less than meticulous work. Miller, Benevolent Assimilation, 228-230. Heading up the anti-Waller camp is Brian M. Linn, who calls Waller "an ambitious and ruthless officer with a fondness for the bottle." He labels Waller's march across Samar as "one of the great American disasters of the war," showing "such palpably unprofessional conduct that Waller should have been relieved, if not court-martialed, instead, he was, and is, lauded as a hero..." Linn shares President Teddy Roosevelt's assessment that Waller's conduct has "sullied the American name," and concludes

that Waller's acquittal was a miscarriage of justice and disgraceful. Linn, Philippine War, 317-319. John Gates is less occupied with Waller's actions than with Smith's, though he believes Waller's performance while on Samar was "unproductive." Gates, Schoolbooks and Krags, 255.

⁵⁶ At his court-martial Waller admitted that the only time he ever exceeded the scope of Smith's instructions was the issuing of written orders for the conduct of the Samar operation that concluded with a call for avenging the victims of the Balangiga massacre. GCM 30313 (MAJ L.T. Waller), RG 153; Schott, The Ordeal of Samar, 161.

⁵⁷ Waller tempered Smith's instruction to "kill everyone over ten" by admonishing his officers that "we do not make war upon women and children and old men." Several other officers and the record of trial corroborate Waller's restriction of Smith's order. GCM 30313 (MAJ L.T. Waller), RG 153; Schott, The Ordeal of Samar, 76, 266, 268. At Smith's court-martial, Waller and others testified that they knew Smith's order to be an exaggeration. GCM 30739 (BG J.H. Smith), RG 153; Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., 1-17.

⁵⁸ Annual Reports of the War Department for the Fiscal Year Ended June 30, 1902, IX (Washington: Government Printing Office): 440-441.

⁵⁹ Linn, citing Waller's own report of the march across Samar, alleges that Waller failed to heed the advice of Army officers stationed on the island to better provision the expedition. Linn, Philippine War, 316. Schott's account of the lack of preparations parallels Linn's. Schott, The Ordeal of Samar, 104-105.

⁶⁰ Linn, Philippine War, 317. For "heroic" versions of the expedition, see Schott, The Ordeal of Samar, 104-121; Miller, Benevolent Assimilation, 222-225. See also the official report of the relief party and Chaffee's endorsement to Washington, Annual Reports of the War Department for the Fiscal Year Ended June 30, 1902, IX (Washington: Government Printing Office): 445-446.

⁶¹ Linn, Philippine War, 306; Miller, Benevolent Assimilation, 227.

⁶² On 25 May 1902, Major General Chaffee, as in an action that represented a censure of Waller, disapproved as reviewing authority the acquittal findings of the Waller court-martial. Chaffee noted that "those sent to their death continued to the last to carry the arms and

ammunition after [the Marines] were no longer able to bear them, and to render in their impulsive way, such service as deepens the conviction that without their service many of the marines who now survive would also have perished.....If any blame attaches for these deplorable results [the loss of life on the march]...it did not rest with the executed men." Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., 43-45; Linn, Philippine War, 318-319; "The Waller Court's Findings Disapproved," New York Times, 26 May 1902, p. 1; "General Chaffee's Disapproval," New York Times, 15 July 1902, p. 5.

⁶³ At his court-martial, Waller refused to defend himself on the basis of temporary insanity or disability, and assumed complete responsibility for the order to execute the prisoners on the basis of the authority conveyed in G.O. No. 100. Fritz, The Philippine Question, 368, 401 fn. 55.

⁶⁴ The water cure was an interrogation technique that forced a large volume of water into the stomach of the suspect, providing a "drowning" effect. As an interrogation method it was effective and seldom led to the suspect's death. Administering the water cure was considered a violation of G.O. No. 100 and was officially proscribed. As a matter of practice, use of the water cure was tacitly sanctioned and widespread in the latter part of the war. Sensationalist press coverage of Senate investigations into cruelties by soldiers in the Philippines, and the subsequent trial of Major Edwin F. Glenn for administering the technique, made the water cure a near household term in the United States. Ibid, 444-449. Glenn was particularly adept at the technique, and Smith gave him free reign to employ the method during his investigation of the *insurrecto* logistical system. Linn, Philippine War, 314-315.

⁶⁵ Miller states that a casual remark to a reporter by Smith at the end of 1901 was the catalyst to the 1902 Senate investigation and ultimately led to Smith's own court martial and conviction. Miller writes that Smith told the reporter that he intended to set the entire island of Samar ablaze and would probably wipe out most of its population. Miller does not attribute this anecdote to any particular source, but the tenor and flavor of the comments are vintage Smith *braggadocio*. Miller, Benevolent Assimilation, 212. The results of Army inquiries into 13 separate reports of cruelty may be found at Appendix C, Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppression Exercise by our Soldiers toward Natives of the Philippines, SD 205, 57th Cong., 1st sess., pt. 1, 4-23.

⁶⁶ See Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess., pt. 1-3.

⁶⁷ Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppression Exercise by our Soldiers toward Natives of the Philippines, SD 205, 57th Cong., 1st sess., pt. 1-2.

⁶⁸ Ibid., Appendix F; Fritz, The Philippine Question, 365; Miller, Benevolent Assimilation, 216-218; Karnow, In Our Image, 192-193. Later the War Department submitted to the committee a more complete accounting of military justice administered in the Philippines. The report details 349 cases of soldiers committing crimes against Filipinos from August 1898 to March 1902. The report reflects an anomaly in that in instances of misconduct not related to alleged war crimes, Army discipline was stern, with stiff sentences issued for even minor crimes of larceny. Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess., pt. 3, 2073-2096;

Fritz, The Philippine Question, 475-476.

⁶⁸ See Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess., pt. 2, 949-1,377 [Part 2, Letter from the Secretary of War Relative to the Reports and Charges in the Public Press of Cruelty and Oppression Exercise by our Soldiers toward Natives of the Philippines, SD 205, 57th Cong., 1st sess., pt. 2, repeats these same documents].

⁷⁰ In early March 1902 Root directed the relief of one of Smith's subordinates for interfering with the civil government. Root further ordered Chaffee to initiate a more lenient policy toward Filipino violations of the laws of war, in effect granting amnesty for past transgressions of the *insurrectos*. Fritz, The Philippine Question, 367.

⁷¹ Schott writes that an embattled Root ordered Chaffee to court-martial Waller. Schott, The Ordeal of Samar, 166-167. Karnow states that Chaffee investigated the Waller executions in a reaction to "sniffing the mood at home," and that Root readily concurred with and was all too willing to "sacrifice a Marine to protect [his] branch of service." Karnow, In Our Image, 193. Miller claims that Chaffee independently investigated the Waller executions as a "self-protective reflex," and pursued Waller's court-martial with Root's approval. Miller proffers that Root hoped a "well-publicized trial, conviction, and stiff sentence" would deflect the public's attention away from the Army and focus on the rival Department of the Navy. Miller, Benevolent Assimilation, 218, 227. The New York Times speculated that Waller was the victim of fellow officers' jealousy. "Waller's Many Admirers," New York Times, 8 March 1902, p. 8. At the time of his court-martial, the New York Times indicated that Waller was a leading candidate for the position of Commandant of the Marine Corps, and reports that the charges against him were intended to discredit his candidacy. "Against Major Waller," New York Times, 9 March 1902, p. 1. Waller's supporters maintain that even though acquitted of the charge, the blemish of the controversy on

Waller's career denied him twice promotion to Commandant of the Corps, retiring as a Major General in 1920. Schott, The Ordeal of Samar, 284; Paul Melshen, "He Served on Samar," United States Naval Institute Proceedings 105 (November 1979): 48.

⁷² Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess., pt. 2, 1548-1549. Glenn's regular use of the water cure is well documented in the Senate hearing by multiple witnesses, and at his later court-martial Glenn defended his use of the water cure to interrogate the mayor of the town of Igbaras, stating: "I am convinced that my action resulted in hastening the termination of hostilities and directly resulted in saving many human lives, and directly injured no one." New York Times, 26 July 1902, p. 9. Linn states that Smith allowed "the brutal brigade provost marshal, Major Glenn, to raid up and down Leyte's coast, kidnapping civilians and dragging them off to Samar." Linn, Philippine War, 315.

⁷³ Despite the legal adage attributed to Lincoln, "the man who is his own lawyer has a fool for a client," Waller had sat as a panel member on several courts-martial and also had experience as counsel for representation, once earning praise from the Solicitor General for his brief and argument before a circuit court. Schott, The Ordeal of Samar, 170. In addition to Glenn, Waller's defense team consisted of Commander Adolf Marix, United States Navy, and Mr. Oscar Sutro, an American civilian attorney practicing in Manila. Schott, The Ordeal of Samar, 171.

⁷⁴ The panel of officers convened to try Waller consisted of seven Army officers and six Marine officers. The 78th Article of War allowed an Army court to convene courts-martial against Marine officers when detached for service with the Army by order of the President. Prior to entering a plea of not guilty, Waller submitted a special plea in bar of trial for lack of jurisdiction. Waller argued that because the orders attaching his battalion for cooperative service under General Smith's 6th Separate Brigade did not operate to detach him from Navy jurisdiction, and, in any event, those orders had been rescinded prior to the initiation of charges against him, the Army was without jurisdiction to try him. The President of the court, Brigadier General William H. Bisbee, accepted the argument. Chaffee, as convening authority, returned the proceedings to the court for revision, in effect ordering the court to proceed on the merits. Bisbee reconsidered his decision and reversed his earlier ruling. GCM 30313 (MAJ L.T. Waller), RG 153, Record of Trial p. 28-29; Schott, The Ordeal of Samar, 168-185; "Major Waller Scores a Point," New York Times, 19 March 1902, p. 1; "Major Waller's Trial Begun," New York Times, 22 March 1902, p. 3.

⁷⁵ At his court-martial, Waller assumed responsibility for the order to execute the prisoners and defended his actions on the basis of G.O. No. 100 articles 27 and 28 (concerning retaliation) and 82 (concerning irregular troops). However, David Fritz points out that Waller

could have more appropriately invoked G.O. No. 100 articles 97 and 101, which permit the summary execution of guides who engage in treachery or deception. Fritz, The Philippine Question, 368, 401 fn. 55; Schott, The Ordeal of Samar, 271-274.

⁷⁶ Waller testified that his actions on Samar were consistent with instructions issued by General Smith. Waller did not elaborate on the incendiary nature of Smith's orders. "Major Waller Testifies," New York Times, 1 April 1902, p. 1. The prosecution judge advocate unwisely called General Smith as a witness to rebut Waller's testimony regarding the authority bestowed upon him by Smith. Schott, The Ordeal of Samar, 245.

⁷⁷ Smith testified that he never gave Waller the "power of life and death over unarmed and defenseless prisoners" because Smith himself "had no such authority myself and could not delegate any authority I did not have." GCM 30313 (MAJ L.T. Waller), RG 153, Record of Trial p. 359-360; "The Trial of Major Waller," New York Times, 8 April 1902, p. 3. Waller had tried to shield General Smith, initially objecting to his summons as a rebuttal witness. When the prosecution judge advocate asked Smith whether he had given Waller the power to execute prisoners without trial, Waller then objected to the question, taking full responsibility for the order to execute the prisoners. Schott, The Ordeal of Samar, 257. Smith pathetically explained that his order to not be burdened with prisoners meant to "disarm and release those prisoners who were not charged with serious offenses." "The Trial of Major Waller," New York Times, 8 April 1902, p. 3. The patently false testimony went to the very core of Waller's credibility and honor, and Waller was forced to reveal the exact nature of Smith's orders and corroborate his version with other officer witnesses.

⁷⁸ "Major Waller Testifies," New York Times, 9 April 1902, p. 3. Smith's perjured testimony rings as hollow today as it did at the time of the Waller trial. Fritz quotes a passage from a letter written by Lieutenant Edwin A. Anderson, Smith's naval liaison, to his wife: "General Smith has been called as a witness on Waller's court-martial and has gone back on everything he said, playing the "baby act." Four witnesses promptly contravened him. Everyone knows that he lied, and the papers do not hesitate to say so. I am sorry that he was ever called, as I fear it will breed bad feeling between the Army and the Navy." Fritz, The Philippine Question, 401 fn. 56.

⁷⁹ "Major Waller Acquitted," New York Times, 14 April 1902, p. 1; Schott, The Ordeal of Samar, 276.

⁸⁰ "Court-Martial of Lieutenant Day," New York Times, 18 April 1902, p. 3; Schott, The Ordeal of Samar, 277-278. Waller thought Day was a coward, and remained convinced that his

court-martial was the result of a charge "instigated by the vain boastfulness" of Day's participation in the executions. Schott, The Ordeal of Samar, 281.

⁸¹ Weeks before Waller's trial commenced in Manila, he was literally tried in the papers of the anti-imperialist press, who labeled him "The Butcher of Samar." Miller, Benevolent Assimilation, 228-229; Schott, The Ordeal of Samar, 244-245.

⁸² Linn, Philippine War, 319; Gates, Schoolbooks and Krags, 255. The revelation of Smith's orders lent credibility to the false or exaggerated soldiers' letters alleging cruelty to Filipinos that had been appearing in the press.

⁸³ "The Waller Acquittal," New York Times, 15 April 1902, p. 3; "More Courts-Martial in the Philippines," New York Times, 16 April 1902, p. 1. Root's 15 April 1902 cabled orders to Chaffee explicitly state that if press dispatches of Smith's "burn and kill" testimony are correct, "and the facts can be established, you will place General Smith on trial by court-martial." Affairs in the Philippine Islands, Hearings before the Committee on the Philippines of the United States Senate, SD 331, 57th Cong., 1st sess., pt. 2, 1548-1549.

⁸⁴ The official explanation was to avoid "any legal entanglements that might have arisen if the order of General Chaffee naming the court had been allowed to stand." Root and Roosevelt may have been concerned that Smith would implicate Chaffee as the originator of the "kill and burn" policy, and thus compel Chaffee's own trial. "The Trial of General Smith," New York Times, 23 April 1902, p. 3. While the phase "howling wilderness" is usually ascribed to Smith, Linn insinuates that Chaffee was the author. Linn, Philippine War, 313, 396 fn. 23. Even though Smith did not implicate Chaffee at his court-martial, Smith later considered appealing his conviction on the grounds of Chaffee's orders regarding the conduct of the Samar campaign, which Smith described to reporters as "much harsher" than his own orders to Waller. Miller, Benevolent Assimilation, 258-259.

⁸⁵ Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., p. 7-8; "General Smith's Counsel Admits Main Charges," New York Times, 26 April 1902, p. 3. During the trial, the prosecution judge advocate merely proved that Smith had uttered the indiscreet remarks, not that any atrocities were committed as a result of the orders. The irony of "Howling Jake" not only escaping a trial for murder but also for the humiliation of being tried for perjury in the Waller case was not lost on the Army Judge Advocate General in his formal review of the Smith case: "As the charges were drawn the real offense of the accused was not made the subject of judicial inquiry." CGM 30739 (BG J.H.

Smith), RG 153; Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., p. 17.

⁸⁶ CGM 30739 (BG J.H. Smith), RG 153; "General Smith's Trial Ended," New York Times, 4 May 1902, p. 1.

⁸⁷ Waller testified at Smith's trial, vainly trying to prop up his former commander: "Without General Smith's drastic measures the war there would not have been ended. General Smith never intended killing women or children." CGM 30739 (BG J.H. Smith), RG 153; "Soldiers Testify in Defense of Smith's 'Kill and Burn' Order," The San Francisco Call, 29 April 1902, p.1. Root's transmittal of the results of trial to President Roosevelt state: "It is due, however, to the good sense and self-restraint of General Smith's subordinates, and their regard for the laws of war, rather than to his own self-control and judgment, that his intemperate and unjustifiable verbal instructions were not followed, and that he is relieved from the indelible stain which would have resulted from a literal compliance with them." General Orders No. 80, Headquarters of the Army, Adjutant General's Office, Washington, 16 July 1902, Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., p. 4.

⁸⁸ CGM 30739 (BG J.H. Smith), RG 153; Fritz, The Philippine Question, 375; "General Smith's Trial Ended," New York Times, 4 May 1902, p. 1.

⁸⁹ The San Francisco Call, 4 May 1902, p.1

⁹⁰ General Orders No. 80, Headquarters of the Army, Adjutant General's Office, Washington, 16 July 1902, Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., p. 3.

⁹¹ Miller, Benevolent Assimilation, 238. Smith's conduct during his trial was erratic and his injudicious self-candor created unnecessary adverse publicity for his case, the Army, and the administration. Chaffee was so concerned about Smith's instability that he cabled Washington asking permission to keep Smith in the Philippines for a short time after the trial. Chaffee feared that if given the opportunity to speak freely with reporters, Smith would "speak 'absurdly unwise,'" and might say things contrary to the facts established in the case, or act like an unbalanced lunatic." Fritz, "Before the Howling Wilderness," 189; Fritz, The Philippine Question, 378.

⁹² General Orders No. 80, Headquarters of the Army, Adjutant General's Office, Washington, 16 July 1902, Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., p. 5-6. In the Smith action, Roosevelt's faint condemnation of Smith's irresponsible orders and his harsh public reprimand directed at Waller seem imprudent in light of Waller's acquittal and Smith's conviction. However light the Smith sentence may have appeared to the anti-imperialist press, Roosevelt's action created a "sensation" in Army circles, with the New York Times reporting that "The belief is growing among Army officers that most of the administration's recent acts toward the Army are dictated by political ends, and the effect upon the discipline and morale of the Army is said to be anything but wholesome." "President Retires General Jacob H. Smith," New York Times, 17 July 1902, p. 1.

⁹³ The New York Times reported that "General Smith, who is wearing civilian attire, appeared exceedingly nervous and worn. His sixty-two years are plainly read in his every action and his intimate friends fear he is breaking down under the severe strain to which he has been subjected in recent months." "General Smith Hears of His Retirement," New York Times, 2 August 1902, p. 8.

⁹⁴ Smith went, with uncharacteristic rectitude, into the night. In his first public pronouncement since his trial, Smith told reporters that his forced retirement was an unwelcome surprise, but concluded: "There is no use asking me to talk about other things. It would not be military. It would be of no use. I am a soldier and take what is coming to me. It is not for me to say whether I deserve it or not. I have done what I thought was right and am ready to settle down in quiet." "General Smith Says He Was Not Severe," New York Times, 4 August 1902, p. 5. Smith retired to Portsmouth, Ohio. In April 1917 he volunteered his military services at the entry of the United States into World War I. He was 77 years old. Smith died in March 1918. Fritz, "Before the Howling Wilderness," 190.

⁹⁵ General Orders No. 87, Headquarters of the Army, Adjutant General's Office, Washington, 26 July 1902, Trials or Courts-Martial in the Philippine Islands in Consequence of Certain Instructions, SD 213, 57th Cong., 2d sess., p. 17-28.

⁹⁶ GCM 34401 (MAJ E.F. Glenn), RG 153. Glenn's defense also implied that Chaffee had specifically approved of the use of whatever measures were necessary to obtain information, and the policy of not affording irregulars status as prisoners of war. Glenn also unsuccessfully tried to subpoena Generals Chaffee and Smith to testify at his trial. See "May Summon General Chaffee," New York Times, 14 December 1902, p. 13; "The Major Glenn Court-Martial Will

Summon Generals Chaffee and Smith to Manila as Witnesses, "New York Times, 16 December 1902, p. 8; "Glenn Court-Martial Ends, New York Times, 25 January 1903, p. 13.

⁹⁷ The promulgating order of Major General Davis reads in part "The finding can only be justified on the theory that the conflicting testimony left at least a reasonable doubt in the mind of the Court as to why the prisoners were killed...giving the accused the benefit of any reasonable doubt that may arise from the testimony in the record, his order under the circumstances shows a reckless disregard for human life which the Division Commander's sense of right and justice, and his conception of law and duty, require him to condemn and reprobate and which prevent him from giving an unqualified approval to the finding and acquittal of the Court. GCM 34401 (MAJ E.F. Glenn), RG 153; "Major Glenn Acquitted," New York Times, 30 January 1903, p. 7; "The Case of Major Glenn," New York Times, 19 February 1903, p. 7; Linn, Philippine War, 319.

⁹⁸ Linn, Philippine War, 321. Glenn outlived whatever disgrace attached as a result of the cases and retired from the Army at the rank of Brigadier General. Schott, The Ordeal of Samar, 280.

⁹⁹ GCM 34401 (MAJ E.F. Glenn), RG153.

¹⁰⁰ In September 1902 the New England Anti-Imperialist League produced their best piece of contemporary propaganda entitled Marked Severities. Directed specifically against Secretary of War Root and President Roosevelt as opposed to the Army, the pamphlet charged that official administration policy sanctioned the use of torture and was intended to kill those wounded in conflict, in effect, a "no prisoners" policy. In addition to specific charges and discussion of Army atrocities, the pamphlet concluded with an analysis, however shallow, of Smith's and Bell's orders in the field with the established laws of war, G.O. No. 100. Fritz, The Philippine Question, 411-418.

¹⁰¹ The President admitted that cruelties by soldiers had occurred, but "they have been wholly exceptional and have been shamelessly exaggerated." Roosevelt deplored the misconduct and pledged stern punishment and stern measures to prevent their recurrence. "President Roosevelt and the Filipinos," The Times of London, 31 May 1902, p. 7.

¹⁰² The Philippine Organic Act of 1 July 1902 extended the protections of the United States Bill of Rights to Filipinos and established a national bi-cameral legislature. One decisive impact

of the atrocity scandals upon the legislation was anti-imperialist modification of the original bill to drastically limit the size of corporate plantation franchises to 1,024 hectares. This measure served to limit the exploitation of the Filipino economy by American and foreign concerns. Fritz, The Philippine Question, 410, 485, 647-648.

¹⁰³ Linn, Philippine War, 321.

¹⁰⁴ Gates, Schoolbooks and Krags, 265.

¹⁰⁵ Linn, Philippine War, 322.

¹⁰⁶ A New York Times editorial of 29 May 1902 both defended and castigated the military justice system and commented upon the "howling wilderness" courts-martial that resulted in reviewing authority disapproval and censure of the results of trial. Responding to charges in other news journals that lamented the hamstrung military reviewing authority precluded from adding to "a punishment which it considers adequate or [unable] to retry a culprit whom it believes to have been wrongfully acquitted," the New York Times defended the restriction, making analogy to Constitutional double-jeopardy and labeling the restriction a protection against "abuse of authority under the pretense of enforcing discipline." However, the New York Times concurred with the editorial criticism that the military needed a professional corps of qualified Judge Advocates to serve as prosecutors, "instead of being, as he often is, an officer detailed for the purpose and quite ignorant of law and evidence..." New York Times, 29 May 1902, p. 8.

¹⁰⁷ Fritz, The Philippine Question, 647. As a final irony to the Waller court-martial saga, the Judge Advocate General of the Army determined in his post-trial review that Waller's original plea "in bar of jurisdiction" was valid, and ruled that "the court-martial acted without jurisdiction and...its proceedings are, for that reason, null and void..." Post-trial review of The Judge Advocate General, GCM 30313 (MAJ L.T. Waller), RG 153, p. 43-44.

¹⁰⁸ An example of the Army officer Corp's sentiment at the conclusion of the Philippine courts-martial was expressed in a New York Times editorial of 23 April 1903, which quoted an anonymous officer as stating: "The truth is, all the officers out here, to use a slang expression, are "buffaloed," and are afraid to do anything for fear of a court-martial. You cannot realize the mischief the different trials out here have worked...The commanding officer here is bound hand and foot, and is unable to take vigorous action. Everything has to be reported at headquarters before any expedition can be undertaken, and so we must sit with folded hands and raging hearts and "wait for orders." We are certainly sowing the wind, and some poor devils will some

day reap the whirlwind." The New York Times editorial decried that "our interests in the Philippines are suffering from the well-founded fear of officers that the action they know to be desirable may expose them to misconstruction and persecution." New York Times, 23 April 1903, p. 8.

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